GOVERNMENT OF INDIA
COMMERCE AND INDUSTRY
LOK SABHA

UNSTARRED QUESTION NO:501
ANSWERED ON:20.11.2007
GUIDELINES ON FDI
Renge Patil Shri Tukaram Ganpatrao;Singh Deo Smt. Sangeeta Kumari

Will the Minister of COMMERCE AND INDUSTRY be pleased to state:

(a) whether the Government has issued any guidelines recently with regard to Foreign Direct Investment (FDI); and

(b) if so, the details thereof?

Answer

MINISTER OF THE STATE IN THE MINISTRY OF COMMERCE & INDUSTRY (SHRI ASHWANI KUMAR)

(a): Policy on Foreign Direct Investment (FDI) was last notified on 10th February, 2006. Government has thereafter, on 19th April, 2007, notified the revised guidelines for FDI in Telecom Service Sector where the limit on FDI was raised from 49 per cent to 74 per cent.

(b): Details of the guidelines contained in Press Note 3 (2007 Series) dated 19-4-2007 are at Annex.

ANNEX

STATEMENT REFERRED TO IN REPLY TO PART (b) OF THE LOK SABHA UNSTARRED QUESTION NO. 501 FOR ANSWER ON 20-11-2007
Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
SIA (FC Division)

PRESS NOTE NO. 3 (2007 SERIES)

Subject: Enhancement of the Foreign Direct Investment ceiling from 49 per cent to 74 per cent in the Telecom sector − revised guidelines.

The Government, vide Press Note 5 (2005 Series) dated 3.11.2005, had notified the enhancement of Foreign Direct Investment (FDI) limits from 49 per cent to 74 per cent in certain telecom services subject to specified conditions.

2. The Government has on a review of the policy in this regard, decided to enhance the Foreign Direct Investment limit from 49 per cent to 74 percent in telecom services subject to the following conditions:

A. Foreign Direct Investment (FDI):

(i) The enhancement of the FDI ceiling will be applicable in case of Basic, Cellular, Unified Access Services, National/ International Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added Services.

(ii) Both direct and indirect foreign investment in the licensee company shall be counted for the purpose of FDI ceiling. Foreign Investment shall include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. Indirect foreign investment shall mean foreign investment in the company/ companies holding shares of the licensee company and their holding company/companies or legal entity (such as mutual funds, trusts) on proportionate basis. Shares of the licensee company held by Indian public sector banks and Indian public sector financial institutions will be treated as `Indian holding'. In any case, the `Indian' shareholding will not be less than 26 percent.

(iii) FDI up to 49 percent will continue to be on the automatic route. FDI in the licensee company/Indian promoters/investment companies including their holding companies, shall require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB shall take note that investment is not coming from countries of concern and/or unfriendly entities.

(iv) The investment approval by FIPB shall envisage the conditionality that Company would adhere to licence Agreement.

(v) FDI shall be subject to laws of India and not the laws of the foreign country/countries.

B. Security Conditions:

(i) The Chief Officer Incharge of technical network operations and the Chief Security Officer should be a resident Indian citizen.

(ii) Details of infrastructure/network diagram (technical details of the network) could be provided on a need basis only to telecom equipment suppliers/manufacturers and the affiliate/ parents of the licensee company. Clearance from the licensor (Department of Telecommunications, Government of India) would be required if such information is to be provided to anybody else.

(iii) For security reasons, domestic traffic of such entities as may be identified / specified by the licensor shall not be hauled/routed to any place outside India.

(iv) The licensee company shall take adequate and timely measures to ensure that the information transacted through a network by the subscribers is secure and protected.

(v) The officers/officials of the licensee companies dealing with the lawful interception of messages will be resident Indian citizens.

(vi) The majority Directors on the Board of the company shall be Indian citizens.

(vii) The positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO), if held by foreign nationals, would require to be security vetted by Ministry of Home Affairs (MHA). Security vetting shall be required periodically on yearly basis. In case something adverse is found during the security vetting, the direction of MHA shall be binding on the licensee.

(viii) The Company shall not transfer the following to any person/place outside India:-

(a) Any accounting information relating to subscriber (except for international roaming/ billing) (Note: it does not restrict a statutorily required disclosure of financial nature); and
(b) User information (except pertaining to foreign subscribers using Indian Operator's network while roaming).

(ix) The Company must provide traceable identity of their subscribers. However, in case of providing service to roaming subscriber of foreign Companies, the Indian Company shall endeavour to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement.

(x) On request of the licensor or any other agency authorised by the licensor, the telecom service provider should be able to provide the geographical location of any subscriber (BTS location) at a given point of time.

(xi) The Remote Access (RA) to Network would be provided only to approved location(s) abroad through approved location(s) in India. The approval for location(s) would be given by the Licensor (DOT) in consultation with the Security Agencies (IB).

(xii) Under no circumstances, should any RA to the suppliers/manufacturers and affiliate(s) be enabled to access Lawful Interception System(LIS), Lawful Interception Monitoring(LIM), Call contents of the traffic and any such sensitive sector/data, which the licensor may notify from time to time.

(xiii) The licensee company is not allowed to use remote access facility for monitoring of content.

(xiv) Suitable technical device should be made available at Indian end to the designated security agency/licensor in which a mirror image of the remote access information is available on line for monitoring purposes.

(xv) Complete audit trail of the remote access activities pertaining to the network operated in India should be maintained for a period of six months and provided on request to the licensor or any other agency authorised by the licensor.

(xvi) The telecom service providers should ensure that necessary provision (hardware/software) is available in their equipment for doing the Lawful interception and monitoring from a centralized location.

(xvii) The telecom service providers should familiarize/train Vigilance Technical Monitoring (VTM)/security agency officers/officials in respect of relevant operations/features of their systems.

(xviii) It shall be open to the licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle.

(xix) In order to maintain the privacy of voice and data, monitoring shall only be upon authorisation by the Union Home Secretary or Home Secretaries of the States/Union Territories.

(xx) For monitoring traffic, the licensee company shall provide access of their network and other facilities as well as to books of accounts to the security agencies.

(xxi) The aforesaid Security Conditions shall be applicable to all the licensee companies operating telecom services covered under this Press Note irrespective of the level of FDI.

(xxii) Other Service Providers (OSPs), providing services like Call Centres, Business Process Outsourcing (BPO), tele-marketing, tele-education, etc, and are registered with DoT as OSP. Such OSPs operate the service using the telecom infrastructure provided by licensed telecom service providers and 100% FDI is permitted for OSPs. As the security conditions are applicable to all licensed telecom service providers, the security conditions mentioned above shall not be separately enforced on OSPs.

3. The conditions at para 2 above shall also be applicable to the existing companies operating telecom service(s) with the FDI cap of 49%.

4. The relevant provisions of FDI policy for 'investment companies', as given in Press Note 2 (2000 series) dated 11.2.2000 issued by Department of Industrial Policy and Promotion will no longer be applicable to telecom sector.

5. Press Note 15 (1998 series) and Press Note 2 (2000 series) issued by Department of Industrial Policy & Promotion stand modified to the above extent.

6. An unconditional compliance to the aforesaid conditions shall be submitted by the existing telecom service providers to the licensor within 3 months from date of the Press Note and, thereafter, compliance report shall be submitted on 1st day of July and January on six monthly basis.

7. Press Note 5 (2005 Series) dated 3.11.2005 stands superceded by this Press Note.

Sd/-
(Gopal Krishna)
Joint Secretary to the Government of India

F. No. 12/2/2006-FC dated the 19th April, 2007